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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Charles Koons,

10 Plaintiff,

11 vs.

12 Parole Officer Donna Phillips, et al.,

13 Defendants.

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No. CV 12-2705-PHX-DGC (SPL)

15 **ORDER**

16 Plaintiff Charles Koons, who is confined in the Maricopa County Lower Buckeye
17 Jail, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1) and
18 an Application to Proceed *In Forma Pauperis* (Doc. 2). The Court will dismiss this
action.

19 **I. Application to Proceed *In Forma Pauperis* and Filing Fee**

20 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.
21 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).
22 The Court will assess an initial partial filing fee of \$10.67. The remainder of the fee will
23 be collected monthly in payments of 20% of the previous month's income each time the
24 amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a
25 separate Order requiring the appropriate government agency to collect and forward the
26 fees according to the statutory formula.

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1 **II. Statutory Screening of Prisoner Complaints**

2 The Court is required to screen complaints brought by prisoners seeking relief
 3 against a governmental entity or an officer or an employee of a governmental entity. 28
 4 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
 5 has raised claims that are legally frivolous or malicious, that fail to state a claim upon
 6 which relief may be granted, or that seek monetary relief from a defendant who is
 7 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

8 A pleading must contain a “short and plain statement of the claim *showing* that the
 9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
 10 does not demand detailed factual allegations, “it demands more than an unadorned, the-
 11 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 12 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
 13 conclusory statements, do not suffice.” *Id.*

14 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 15 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
 16 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
 17 content that allows the court to draw the reasonable inference that the defendant is liable
 18 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
 19 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
 20 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
 21 specific factual allegations may be consistent with a constitutional claim, a court must
 22 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
 23 at 681.

24 But as the United States Court of Appeals for the Ninth Circuit has instructed,
 25 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
 26 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less
 27 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

If the Court determines that a pleading could be cured by the allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court should not, however, advise the litigant how to cure the defects. This type of advice “would undermine district judges’ role as impartial decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131 n.13 (declining to decide whether the court was required to inform a litigant of deficiencies). Plaintiff’s Complaint will be dismissed for failure to state a claim, without leave to amend because the defects cannot be corrected.

III. Complaint

In his three-count Complaint, Plaintiff names as Defendants Parole Officer Donna Phillips and the Arizona Department of Corrections Parole Office.

Plaintiff contends that because Defendant Phillips and others told him that he did not have a term of probation to serve after he completed his parole, Plaintiff did not “check in” with the probation department after he was released from parole. Plaintiff asserts that because he did not check in after he was released from parole, the probation department issued a warrant for his arrest. Plaintiff asserts that as a result of Defendant Phillips’s conduct, he is in jail for violating the terms of his probation.

In Count One, Plaintiff alleges that he was subjected to cruel and unusual punishment and a due process violation because of Defendant Phillips’s negligence. In Count Two, he asserts that he was subjected to cruel and unusual punishment and a due process violation because Defendant Phillips was intentionally negligent “out of some kind of wanton need to keep [Plaintiff] in the cycle of the judic[ial] system.” In Count Three, Plaintiff asserts that Defendant Phillips acted intentionally and purposefully and, therefore, violated her “oath[]s and affirmations” to be truthful and engaged in perjury and “fraud by false report.”

1 In his Request for Relief, Plaintiff seeks monetary damages, “some Administrative
 2 review rel[]ated to [his] claims of [Defendant Phillips’s] nonchalant misinforma[tion] of
 3 [his] true probation status,” and “administrative remedy for such negligence.”

4 **IV. Failure to State a Claim**

5 A prisoner’s claim for damages cannot be brought under 42 U.S.C. § 1983 if “a
 6 judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction
 7 or sentence,” unless the prisoner demonstrates that the conviction or sentence has
 8 previously been reversed, expunged, or otherwise invalidated. *Heck v. Humphrey*, 512
 9 U.S. 477, 486-87 (1994). *See also Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005) (“[A]
 10 state prisoner’s § 1983 action is barred (absent prior invalidation)—no matter the relief
 11 sought (damages or equitable relief), no matter the target of the prisoner’s suit (state
 12 conduct leading to conviction or internal prison proceedings)—if success in that action
 13 would necessarily demonstrate the invalidity of confinement or its duration.”).

14 Plaintiff’s claims imply the invalidity of his probation revocation and are therefore
 15 barred by *Heck*. *See Crow v. Penry*, 102 F.3d 1086, 1087 (10th Cir. 1996) (suit against
 16 probation officer, probation department, and parole commission for alleged violations of
 17 his constitutional rights (including claim that his probation officer failed to advise him or
 18 misadvised him regarding a term of his probation) that resulted in his arrest as a parole
 19 violator, revocation of parole, and additional incarceration, necessarily implied the
 20 invalidity of his parole revocation and was not permitted under *Heck*).

21 **IT IS ORDERED:**

22 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.

23 (2) As required by the accompanying Order to the appropriate government
 24 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing
 25 fee of \$10.67.

26 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim pursuant to
 27 28 U.S.C. § 1915A(b)(1), and the Clerk of Court must enter judgment accordingly.

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(4) The Clerk of Court must make an entry on the docket stating that the dismissal for failure to state a claim may count as a “strike” under 28 U.S.C. § 1915(g).

3 (5) The docket shall reflect that the Court certifies, pursuant to 28 U.S.C.
4 § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), that any appeal of
5 this decision would not be taken in good faith.

6 | Dated this 5th day of March, 2013.

Daniel G. Campbell

**David G. Campbell
United States District Judge**